REMARKS

Claims 2–5, 8, 9, 17–26, 29, 33–41, and 45–50 are pending in this application. Currently no claims stand allowed. The non-final Office Action mailed May 20, 2005 rejected the pending claims and objected to Claims 2–5, 22, and 38. In this response Applicants have amended Claims 2–5, 8, 22, 38, and 49, and Applicants have added new Claim 50. No new matter has been added by any of these amendments. The amendment of Claim 8 is submitted to clarify that Claim 8 depends directly from Claim 2. Applicants submit that the pending claims are patentable for at least the reasons discussed below.

Claim Objections

The Office Action objected to Claims 2–5, 22, and 38 because of informalities that have been corrected in this response. In view of these amendments, Applicants respectfully request that the objections to Claims 2–5, 22, and 38 be withdrawn.

Claim Rejection Under 35 U.S.C. § 112

The Office Action rejected Claim 2 under 35 U.S.C. § 112, second paragraph. Claim 2 has been amended to satisfy the concerns raised in the Office Action regarding antecedent basis. In view of this amendment, Applicants respectfully request that the rejection of Claim 2 under 35 U.S.C. § 112 be withdrawn.

Claim Rejections Under 35 U.S.C. § 101

The Office Action rejected Claims 38–41 and 45–48 under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. Independent Claim 38, as amended herein, is a "modulated data signal embodied in a carrier wave and representing computer executable instructions for performing actions that enable delivery of content over a network." The Office Action contends that this subject matter is not statutory "unless implemented on a computer-readable medium." Office Action, p. 3.

Applicants respectfully note, however, that a carrier wave *is* a computer-readable medium. The *Examination Guidelines for Computer-Related Inventions,* Example: Automated Manufacturing Plant and Appended Claim Analysis (United States Patent and Trademark Office, March 28, 1996, available at http://www.uspto.gov/web/offices/pac/dapp/pdf/compenex.pdf, June 22, 2005), includes an analysis of an exemplary statutory claim directed to a "computer data signal embodied in a carrier wave" comprising "a compression source code segment" and "an encryption source code segment." *Id.* at 37 (Claims). As explained in the *Examination Guidelines*, this data signal claim is a statutory article of manufacture claim in which "the computer program is embodied on a computer-readable medium— the carrier wave." *Id.* at 4 (Claim Analysis). Accordingly, Claim 38 is directed to statutory subject matter and is therefore allowable. Moreover, since Claims 39–41 and 45–48 depend from independent Claim 38, and since the rejections of these dependent claims under 35 U.S.C. § 101 are based on the rejection of Claim 38, these dependent claims are also directed to statutory subject matter and are allowable.

Claim Rejections Under 35 U.S.C. § 102(e) and § 103(a)

The Office Action rejected Claims 2–5, 22–24, 39, 40, and 49 under 35 U.S.C. § 102(e) as being anticipated by Lim (U.S. Patent 6,360,256). The Office Action rejected Claims 8, 9, 17–21, 25, 26, 29, 33–38, 41, and 45–48 under 35 U.S.C. § 103(a) as being unpatentable over Lim in view of Jindal et al. (U.S. Patent 6,092,178). Applicants respectfully traverse these rejections.

Applicants submit that Claims 2–5, 22–24, 39, 40, and 49 are not anticipated by or obvious in view of Lim. For example, amended independent Claim 2 recites a method of delivering content across a plurality of zones within a network. The method includes, among other elements, "determining whether to delegate delivery of the resources to a content delivery network." The term "content delivery network" (CDN) is defined explicitly in Applicants' Specification: "A content delivery network (CDN) infrastructure generally attempts to move content as close as possible to end users prior to users accessing the content resulting in faster content delivery for the user." Specification 6–7. The use of content delivery networks by a content provider is illustrated, for example, in Figures 15, 18, and 19 of the Application.

In contrast to the claimed invention, Lim does not disclose or suggest *determining whether to delegate delivery of requested resources to a CDN.* Lim does not mention the concept of a CDN, or any related concept, at all. Moreover, Lim contains no disclosure or suggestion of delegation of traffic by a content provider to an internal or external network or infrastructure for content delivery. Lim therefore does not anticipate Claim 2.

For at least the reasons stated above, Applicants respectfully submit that Claim 2 should be allowed to issue. Furthermore, because Claims 3–5, 8, 9, and 17–21 depend from independent Claim 2, these dependent claims are allowable for at least substantially the same reasons given above with respect to Claim 2.

Amended independent Claims 22, 38, and 49 contain elements similar to, albeit different from, the elements discussed above with respect to amended independent Claim 2. For at least the same reasons presented above with respect to Claim 2, Claims 22, 38, and 49 are allowable over Lim. In addition, Claim 38 is not obvious over Lim in view of Jindal. As with Lim, Jindal does not disclose or suggest the concept of a CDN or of delegation of delivery of requested resources to a CDN, nor do Lim and Jindal in combination teach or suggest these features. Furthermore, because Claims 23-26, 29, and 33-37; and Claims 39-41 and 45-48 depend from Claims 22 and 38, respectively, these dependent claims are allowable for at least substantially the same reasons. New Claim 50 contains elements similar to, albeit different from, the elements discussed above with respect to Claim 2 and is allowable over the cited art for at least substantially the same reasons.

It is further noted that, although Claims 2, 22, 38, and 49 have been amended, these amendments have not been made for purposes of patentability, but rather have been made to clarify that which Applicants regard as their invention.

CONCLUSION

In view of the foregoing remarks, Applicants believe that this response has responded fully to the concerns expressed in the Office Action and that this response places each of the pending claims in condition for immediate allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

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Respectfully submitted,

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